

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LYLE FERDINAND HUMPHREY,
Petitioner,

vs.

STEVE SINCLAIR,
Respondent.

NO. CV-09-321-EFS

ORDER DENYING PETITION

BEFORE THE COURT is Petitioner Lyle Ferdinand Humphrey's Petition for Writ of Habeas Corpus. (Ct. Rec. 1.) Petitioner, a prisoner at the Washington State Penitentiary in Walla Walla, is proceeding pro se and has paid the \$5.00 filing fee; Respondent was served on November 13, 2009.

Petitioner challenges his sentence for second-degree assault. Petitioner was convicted in 2006 in Spokane County Superior Court and sentenced to life without the possibility of early release. As grounds for federal habeas relief, Petitioner asserts: (1) erroneous self-defense instruction; and (2) admission of inadmissible evidence.

Habeas corpus petitions are subject to a one-year statute of limitations. 28 U.S.C. § 2244(d). The limitations period begins to run at the later of "the date on which judgment became final by the conclusion of direct review or the expiration of the time for seeking

1 such review." *Id.* A judgment becomes final after "the period within
2 which a petitioner can file a petition for a writ of certiorari from the
3 United States Supreme Court, whether or not the petitioner actually
4 files a petition" runs out. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir.
5 1999). A petitioner has ninety days after the highest state court's
6 judgment to file a petition for a writ of certiorari. Sup. Ct. R. 13.

7 The Washington Supreme Court denied Mr. Humphrey's petition for
8 review on March 4, 2008. (Ct. Rec. 29 Ex. 8.) Mr. Humphrey claims that
9 the final date of the mandate was October 23, 2008, and he did not
10 receive a copy until after that. However, according to the copy of the
11 mandate that Mr. Humphrey submitted along with his most recent letter
12 (Ct. Rec. 30), October 23, 2008 was the date of the mandate from the
13 Washington Court of Appeals after remand from the Washington Supreme
14 Court. It is undisputed that the judgment became final ninety days
15 after the Washington Supreme Court's order denying review, or on June 3,
16 2008. Therefore, Mr. Humphrey was required to file his petition no
17 later than June 3, 2009. He did not do so until September 18, 2009.
18 Therefore, his petition is time-barred.

19 Accordingly, **IT IS ORDERED:**

20 1. Mr. Humphrey's Petition for a Writ of Habeas Corpus (Ct. Rec. [1](#))
21 is **DENIED**.

22 2. Mr. Humphrey's Motion to Appoint Counsel (Ct. Rec. [27](#)) is
23 **DENIED as moot**.

24 3. The Clerk of the Court is **DIRECTED** to **ENTER** Judgment in
25 Respondent's favor.

26 4. The Clerk of the Court is **DIRECTED** to close this file.

DATED this 22nd day of February 2010.

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